

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BRIAN DAVIS  
on behalf of himself and  
all other similarly situated consumers

Plaintiff,

-against-

FIRST CREDIT SERVICES INC.

Defendant.

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**CLASS ACTION COMPLAINT**

***Introduction***

1. Plaintiff Brian Davis seeks redress for the illegal practices of First Credit Services Inc. concerning the collection of debts, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (“FDCPA”).

***Parties***

2. Plaintiff is a citizen of the State of New York who resides within this District.
3. Plaintiff is a consumer as that term is defined by Section 1692(a)(3) of the FDCPA, in that the alleged debt that Defendant sought to collect from Plaintiff is a consumer debt.
4. Upon information and belief, Defendant's principal place of business is located in Pischataway, New Jersey.
5. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.
6. Defendant is a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

***Jurisdiction and Venue***

7. This Court has federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district.

***Allegations Particular to Brian Davis***

9. Upon information and belief, on a date better known by Defendant, Defendant began to attempt to collect an alleged consumer debt from the Plaintiff.
10. On or about June 4, 2015, Defendant sent the Plaintiff a collection letter seeking to collect a balance allegedly incurred for personal purposes.
11. The said letter stated in pertinent part as follows: “Call us today or simply detach the bottom portion of this letter and send your payment in the enclosed envelope.”
12. Said language misrepresented and contradicted the Plaintiff's right to dispute the debt under § 1692g and was deceptive in violation of 15 U.S.C. §§ 1692e and 1692e(10).
13. Defendant's letter is contradictory, as on the one hand, it informs the consumer that he has a total of thirty days to dispute the debt, but then notifies the consumer that he should “call us today or detach the bottom portion of this letter.”
14. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.
15. Defendant's June 4, 2015 letter is in violation of 15 U.S.C. §§ 1692e, 1692e(10), and 1692g, for false and deceptive actions and for misrepresenting and contradicting the Plaintiff's right to dispute the debt.

**AS AND FOR A FIRST CAUSE OF ACTION**

***Violations of the Fair Debt Collection Practices Act brought by Plaintiff on behalf of himself and the members of a class, as against the Defendant.***

16. Plaintiff re-states, re-alleges, and incorporates herein by reference, paragraphs one (1) through fifteen (15) as if set forth fully in this cause of action.
17. This cause of action is brought on behalf of Plaintiff and the members of a class.
18. The class consists of all persons whom Defendant's records reflect resided in the State of New York and who were sent a collection letter in substantially the same form letter as the letter sent to the Plaintiff on or about June 4, 2015; and (a) the collection letter was sent to a consumer seeking payment of a personal debt purportedly owed to Retro Fitness; and (b) the collection letter was not returned by the postal service as undelivered; (c) and the Plaintiff asserts that the letter contained violations of 15 U.S.C. §§ 1692e, 1692e(10), and 1692g, for false and deceptive actions and for misrepresenting and contradicting the Plaintiff's right to dispute the debt.
19. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:
  - A. Based on the fact that a form collection letter is at the heart of this litigation, the class is so numerous that joinder of all members is impracticable.
  - B. There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether the Defendant violated the FDCPA.

C. The only individual issue is the identification of the consumers who received such collection letters (*i.e.* the class members), a matter capable of ministerial determination from the records of Defendant.

D. The claims of the Plaintiff are typical of those of the class members. All are based on the same facts and legal theories.

E. The Plaintiff will fairly and adequately represent the class members' interests. The Plaintiff has retained counsel experienced in bringing class actions and collection-abuse claims. The Plaintiff's interests are consistent with those of the members of the class.

20. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA. 15 U.S.C. § 1692(k). The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the classes would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.
21. If the facts are discovered to be appropriate, the Plaintiff will seek to certify a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.
22. Collection attempts, such as those made by the Defendant are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

***Violations of the Fair Debt Collection Practices Act***

23. The Defendant's actions as set forth above in the within complaint violates the Fair Debt Collection Practices Act.
24. Because the Defendant violated the Fair Debt Collection Practices Act, the Plaintiff and the members of the class are entitled to damages in accordance with the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff, respectfully requests preliminary and permanent injunctive relief, and that this Court enter judgment in his favor and against the Defendant and award damages as follows:

- A. Statutory damages provided under the FDCPA, 15 U.S.C. § 1692(k);
- B. Attorney fees, litigation expenses and costs incurred in bringing this action;  
and
- C. Any other relief that this Court deems appropriate and just under the circumstances.

Dated: Cedarhurst, New York  
October 30, 2015

/s/ Adam J. Fishbein  
Adam J. Fishbein, P.C. (AF-9508)  
Attorney At Law  
**Attorney for the Plaintiff**  
483 Chestnut Street  
Cedarhurst, New York 11516  
Telephone (516) 791-4400  
Facsimile (516) 791-4411

Plaintiff requests trial by jury on all issues so triable.

/s/ Adam J. Fishbein  
Adam J. Fishbein (AF-9508)

First Credit Services, Inc.

371 Hoes Lane, Suite 300 B  
Piscataway, NJ 08854  
(800) 580-3912 • Fax: 732-726-6490

Hours of Operation:  
Monday Through Friday 8AM - 9PM EST  
Saturday 8AM - 2PM EST



IMPORTANT NOTICE

Creditor:	RETROFITNESS-MIDDLETOWN
Account:	849172225
Balance Due:	\$85.56
Master Location:	5006601
Business ID:	545323
Master #:	II2276
Letter Type:	OP4

Dear Brian Davis,

Your account has been referred to us by RETRO FITNESS - MIDDLETOWN to collect your past-due obligation. According to our client's records, you are responsible for the remaining balance of \$85.56. Our client has reviewed YOUR account along with the terms of your GYM MEMBERSHIP AGREEMENT, and determined that you are now in default, and you must contact us to clear this matter. The remaining balance of \$85.56 is your responsibility to pay. Please understand that if this debt is not resolved, it may be reported to the credit bureaus and negatively affect your credit rating.

Call us today or simply detach the bottom portion of this letter and send your payment in the enclosed envelope. Please make all checks payable to FIRST CREDIT SERVICES, INC., or if you wish, you may pay your account with your debit or credit card. It is a simple and convenient way to get this bill paid, and clear your name from collections.

1. call our automated phone system (877) 729-8845
2. visit our web payment system at [Http://fcs.solvemydebt.com](http://fcs.solvemydebt.com)
3. to speak with a live representative please call (800) 580-3912

This delinquent balance will remain your responsibility until we work together to resolve your outstanding obligation of \$85.56 due our client.

If for any reason you are unable at this point in time to make payment, please call our customer service group at the above listed phone number. They will work with you on setting up a flexible payment arrangement to meet your needs and assist you in resolving this current situation. Please send any written correspondence to First Credit Services, Inc. at the address listed above.

We look forward to your response.

Sincerely,  
First Credit Services, Inc.  
(800) 580-3912

June 4, 2015

Creditor	RETRO FITNESS - MIDDLETOWN
Account #	849172225
Balance Due	\$85.56
Master Location	5006601
Business ID	545323
Master #:	II2276

Creditor	Regarding	Amt Owed
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UNLESS YOU NOTIFY THIS OFFICE WITHIN 30 DAYS AFTER RECEIVING THIS NOTICE THAT YOU DISPUTE THE VALIDITY OF THIS DEBT OR ANY PORTION THEREOF, THIS OFFICE WILL ASSUME THE DEBT IS VALID. IF YOU NOTIFY THIS OFFICE IN WRITING WITHIN 30 DAYS FROM RECEIVING THIS NOTICE THAT YOU DISPUTE THE VALIDITY OF THIS DEBT OR ANY PORTION THEREOF, THIS OFFICE WILL OBTAIN VERIFICATION OF THE DEBT OR OBTAIN A COPY OF A JUDGMENT AND MAIL YOU A COPY OF SUCH JUDGMENT OR VERIFICATION. IF YOU REQUEST THIS OFFICE IN WRITING WITHIN 30 DAYS AFTER RECEIVING THIS NOTICE THIS OFFICE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF DIFFERENT FROM THE CURRENT CREDITOR.

New York City Residents:

New York City Department of Consumer Affairs License Number 1428221.

Debt collectors, in accordance with the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., are prohibited from engaging in abusive, deceptive, and unfair debt collection efforts, including but not limited to:

- a) the use or threat of violence;
- b) the use of obscene or profane language; and
- c) repeated phone calls made with the intent to annoy, abuse, or harass.

If a creditor or debt collector receives a money judgment against you in court, state and federal laws may prevent the following types of income from being taken to pay the debt:

1. Supplemental security income, (SSI);
2. Social security;
3. Public assistance (welfare);
4. Spousal support, maintenance (alimony) or child support;
5. Unemployment benefits;
6. Disability benefits;
7. Workers' compensation benefits;
8. Public or private pensions;
9. Veterans' benefits;
10. Federal student loans, federal student grants, and federal work study funds; and
11. Ninety percent of your wages or salary earned in the last sixty days

**THIS COMMUNICATION IS FROM A DEBT COLLECTOR.**  
This is an attempt to collect a debt and any information obtained will be used for that purpose.

▲ Detach Lower Portion And Return With Payment\* To pay by Credit Card Please see reverse side ▲

PO BOX 1121  
CHARLOTTE NC 28201-1121  
Return Service Requested

5

Creditor:	RETROFITNESS-MIDDLETOWN
Account:	849172225
Balance Due:	\$85.56
Master Location:	5006601
Business ID:	545323
Master #:	II2276
Letter Type:	OP4

FIRST CREDIT SERVICES, INC.  
PO BOX 549  
WOODBIDGE, NJ 07095-0549

BRIAN DAVIS  
33 OVIS PL  
STATEN ISLAND NY 10306-3717



First Credit Services, Inc.

371 Hoes Lane, Suite 300 B  
Piscataway, NJ 08854  
(800) 580-3912 • Fax: 732-726-6490

Hours of Operation:  
Monday Through Friday 8AM - 9PM EST  
Saturday 8AM - 2PM EST

Creditor:	RETRO FITNESS - MIDDLETOWN
Account:	849172225
Balance Due:	\$85.56
Master Location:	5006601
Business ID:	545323
Master #:	112276
Letter Type:	0P4

NOTICIA IMPORTANTE

4 de junio de 2015

Querida Brian Davis,

Su cuenta nos ha sido referida por RETRO FITNESS - MIDDLETOWN para cobrar su saldo vencido. De acuerdo a los registros de nuestro cliente, usted es responsable por el saldo de \$85.56. Nuestro cliente ha revisado SU cuenta junto con los términos de su ACUERDO DE MEMBRESIA DE GYM, y ha determinado que usted esta ahora en falta y debe contactarnos para arreglar este asunto. Es su responsabilidad pagar saldo adeudado de \$85.56. Por favor entienda que si esta deuda no se resuelve, puede ser reportada a las agencias de crédito y afectar su puntaje de crédito en forma negativa.

Llámenos hoy o simplemente desprenda la parte inferior de esta carta y envíe su pago en el sobre adjunto. Por favor haga los cheques a la orden de FIRST CREDIT SERVICES, INC., o si lo desea usted puede pagar su cuenta con su tarjeta de débito o crédito. Es una forma simple y conveniente de pagar esta cuenta y limpiar su nombre de deudas.

1. llame a nuestro sistema automático de llamadas al (877) 729-8845
2. visite nuestro sistema de pago en la web en [Http://fcs.solvemydebt.com](http://fcs.solvemydebt.com)
3. para hablar con un representante por favor llame al (800) 580-3912

Este saldo vencido permanecerá su responsabilidad hasta que trabajemos juntos para resolver su obligación pendiente de \$85.56 adeudada a nuestro cliente.

Si por alguna razón usted está imposibilitado de pagar en este momento, por favor llame a nuestro servicio al cliente al número listado arriba. Ellos trabajarán con usted para establecer un plan de pagos que se adecua a sus necesidades y lo asistirán en resolver esta situación. Por favor envíe su correspondencia por escrito a First Credit Services, Inc. al domicilio listado arriba.

Esperamos su respuesta.

Sinceramente,

First Credit Services, Inc.  
(800) 580-3912

Creditor	RETRO FITNESS - MIDDLETOWN
Account #	849172225
Balance Due	\$85.56
Master Location	5006601
Business ID	545323
Master #:	112276

Creditor	Regarding	Amt Owed
RETRO FITNESS - MIDDLETOWN		\$85.56

A MENOS QUE USTED NOTIFIQUE A ESTA OFICINA DENTRO DE LOS 30 DIAS DE RECIBIDA ESTA NOTA QUE USTED DISPUTA LA VALIDEZ DE ESTA DEUDA O UNA PARTE DE LA MISMA. ESTA OFICINA ASUMIRA QUE LA DEUDA ES VALIDA. SI USTED NOTIFICA A ESTA OFICINA POR ESCRITO DENTRO DE LOS 30 DIAS DE RECIBIDA ESTA NOTA QUE USTED DISPUTA LA VALIDEZ DE ESTA DEUDA O UNA PARTE DE ELLA, ESTA OFICINA OBTENDRA VERIFICACION DE LA DEUDA O UNA COPIA DEL JUICIO Y LE ENVIARA POR CORREO UNA COPIA DE ESE JUICIO O VERIFICACION. SI USTED LO REQUIERE POR ESCRITO DENTRO DE LOS 30 DIAS DE RECIBIDA ESTA NOTA, ESTA OFICINA LE PROVEERA EL NOMBRE Y DOMICILIO DEL ACREEDOR ORIGINAL, SI ES DIFERENTE DEL ACREEDOR ACTUAL.

**Residentes de la Ciudad de New York:**  
Número de Licencia en el Departamento de Asuntos del Consumidor en New York City : 1428221.

Los cobradores de deudas de acuerdo al Acta de Cobranza de Deudas Justa, 15 U.S.C. § 1692 et seq., tienen prohibido el uso de esfuerzos de cobranza de deudas abusivas, engañosas e injustas, incluyendo pero no solamente:

- a) el uso de amenazas de violencia;
- b) el uso de lenguaje obsceno o profano; y
- c) llamadas telefónicas repetidas hechas con la intención de enojar, abusar o acosar.

Si un acreedor o cobrados de deudas recibe un fallo en dinero en su contra, las leyes estatales y federales pueden evitar que los siguientes tipos de ingresos sean tomados para pagar la deuda:

1. Ingreso de Seguro Suplementario;

2. Seguro Social;

3. Asistencia Pública (welfare);

4. La manutención del cónyuge , mantenimiento (pensión alimenticia ) o manutención de los hijos;

5. Beneficio de Desempleo;



6. Beneficios de Discapacidad;
7. Beneficios de Compensación del Trabajador;

8. Pensiones Públicas o Privadas;

9. Beneficios de Veteranos;

10. Préstamos estudiantiles federales , becas estudiantiles federales y fondos federales de estudio y trabajo; y

11. Noventa por ciento de su sueldo o salario ganado en los últimos sesenta días.

Check One:/ Marque una: <input type="checkbox"/>  <input type="checkbox"/> 	
Expiration Date:/ Fecha de Expiracion: ____/____/____	Amount of Payment:/ Cantidad del pago: \$
Card#:/ Tarjeta#:	Signature:/ Firma:

Third party service provider fees may apply for some methods of payment.  
Cargos de Proveedores de Servicio por Terceros puede aplicar para algunos métodos de pago.